United Nations A/HRC/26/30/Add.2

General Assembly

Distr.: General
1 April 2014

Original: English

Human Rights Council
Twenty-sixth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue

Addendum

Mission to the former Yugoslav Republic of Macedonia*

Summary

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression undertook an official visit to the former Yugoslav Republic of Macedonia from 18 to 21 June 2013. Despite the existence of a national legal framework with regard to the right to freedom of opinion and expression, which is mostly in line with international standards, and having achieved some progress, such as the decriminalization of defamation, a number of recent events indicate a worrying deterioration of the space for freedom of expression, in particular a narrowing of the space for pluralism and independence in the national media.

The Special Rapporteur was especially concerned by the information he received on recent cases of alleged intimidation by the authorities, through multiple legal procedures, of media and journalists critical of them. The worrying indicators include the closure of important media enterprises ordered by the authorities and the arbitrary detention of an investigative journalist. The Special Rapporteur was also seriously concerned by allegations regarding interference by government authorities with the independence of regulatory bodies and the judicial system. He was further concerned by the level of polarization between media groups and journalists sympathetic to the Government and

* The summary of the present report is being circulated in all official languages. The report itself, contained in the annex to the summary, is being circulated in the language of submission only.

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those taking a critical position.

While noting with appreciation that the Government has engaged in some initiatives supporting the promotion of cultural diversity in the media, the Rapporteur was disturbed by reports of the emergence of hate speech in the media and on the Internet. In particular, he noted a lack of attention paid to discrimination on the grounds of sexual orientation and gender identity.

The report concludes with a set of recommendations on ensuring the adequate enforcement of norms protecting the freedom and independence of the media; investing in the promotion of the right to access information; revising legislation concerning the surveillance of communications; and ensuring respect for diversity and non-discrimination.

Annex

[English only]

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to the former Yugoslav Republic of Macedonia (18-21 June 2013)

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I. Introduction

1. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, undertook an official mission to the former Yugoslav Republic of Macedonia from 18 to 21 June 2013, at the invitation of the Government. The visit was carried out pursuant to his mandate to assess compliance with international standards on the right to freedom of opinion and expression.

2. During his visit, the Special Rapporteur met a number of government officials, including the Minister of Foreign Affairs, Nikola Poposki, the Minister of Justice, Blerim Bexheti, the Minister of the Interior, Gordana Jankulovska and the Minister of the Information Society and Public Administration, Ivo Ivanovski. He also met the President of the Parliament, Trajko Veljanovski, the President of the Supreme Court, Lidija Nedelkovska, the President of the Constitutional Court, Branko Naumoski and the Public Prosecutor, Marko Zvrlevski, the President of the Broadcasting Council, Zoran Trajcevski, and the Ombudsman, Ixhet Memeti.

3. The Special Rapporteur also met representatives of civil society, including human rights organizations, journalists' associations and academia. He also met a number of journalists who were facing defamation charges.

4. The Special Rapporteur expresses his gratitude to the Government for its invitation to visit the country and for the support he received before and during his visit. Nevertheless, he expresses his disappointment that, despite repeated requests, he was unable to meet with the journalist Tomislav Kezarovski, who was in detention during the period of his visit.

5. The Special Rapporteur would also like to thank the United Nations country team in the former Yugoslav Republic of Macedonia, in particular the human rights adviser, for facilitating all his activities during this visit. Finally, he would like to express his appreciation for the invaluable contribution by civil society representatives, in particular activists and journalists who shared their personal experiences.

II. International legal standards

6. In carrying out his assessment of the situation regarding the right to freedom of opinion and expression in the former Yugoslav Republic of Macedonia, the Special Rapporteur is guided by the relevant international legal standards. In this case, the most pertinent treaties are the International Covenant on Civil and Political Rights, which was ratified by the country on 18 January 1994 and, at the regional level, the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), ratified on 10 April 1997.

7. The Special Rapporteur is guided by article 19 of the International Covenant on Civil and Political Rights and article 10 of the European Convention on Human Rights on freedom of expression. He is also guided by other relevant declarations, resolutions and guidelines of various United Nations bodies, including general comment No. 34 of the Human Rights Committee (2011) on article 19: freedoms of opinion and expression; resolutions 16/4 and 21/12 of the Human Rights Council; and the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.

III. Domestic legal framework

8. In line with international standards, the Constitution of the former Yugoslav Republic of Macedonia guarantees the right to freedom of opinion and expression as a fundamental human right. Article 16 provides that: "the freedom of personal conviction, conscience, thought and public expression of thought is guaranteed. The freedom of speech, public address, public information and the establishment of institutions for public information is guaranteed. Free access to information and the freedom of reception and transmission of information are guaranteed. The right of reply via the mass media is guaranteed. The right to a correction in the mass media is guaranteed. The right to protect a source of information in the mass media is guaranteed. Censorship is prohibited."[1]

9. In article 118, the Constitution further establishes that international treaties ratified by the country are part of the internal legal order of the former Yugoslav Republic of Macedonia and may not be amended by law or another act. Article 98 provides that courts can rule on the basis of the Constitution and laws and international agreements ratified by the country.

10. Other particularly relevant national legal instruments include: the Criminal Code, which, inter alia, prohibits coercion aimed at changing someone's position and belief; the Law on Electronic Communications, regulating the electronic communications sector; the Law on Broadcasting Activity, which governs the transmission of radio and television programmes; and the Law on Free Access to Public Information, which establishes the conditions and procedures for accessing public information held by State authorities.

11. In November 2012, parliament adopted the Law on Civil Liability for Defamation and Libel and removed sanctions for defamation from the Criminal Code. At the time of the visit, the Ministry of the Information Society and Public Administration was developing the recently presented draft law on the media, which was amended after consultations and adopted in December 2013 in the form of two laws: the Law on the Media and the Law on Audio and Audiovisual Media Services.

IV. Situation of the right to freedom of opinion and expression in the former Yugoslav Republic of Macedonia

A. General overview

12. The full realization of the right to freedom of opinion and expression is commonly understood as a core requirement for the promotion of democratic governance. The free and safe flow of critical ideas and a well-functioning independent press are vital elements in the promotion of transparency and accountability. In this context, the Special Rapporteur notes with appreciation that the national legal framework of the former Yugoslav Republic of Macedonia, starting with the Constitution, fully recognizes the centrality of the protection of this fundamental human right. Equally, the national authorities he met throughout the visit reaffirmed their view of the importance of ensuring that the utmost attention is paid to freedom of opinion and expression in the consolidation of democracy in the country.

13. At the international level, the former Yugoslav Republic of Macedonia has reaffirmed its willingness to enhance the protection of the right to freedom of expression on a number of different occasions. It accepted two recommendations to take measures to ensure the independence of the press during the first examination of the country in the

[1] www.sobranie.mk/en/?ItemID=9F7452BF44EE814B8DB897C1858B71FF.

framework of the universal periodical review in 2009 (A/HRC/12/15, recommendations 35 and 39). The high-level dialogue with the European Union on accession, launched in March 2012, included freedom of expression and independence of the media as one of its five priority areas, establishing goals in terms of law and policy improvements. In this context, the Special Rapporteur notes that some important progress has been achieved, welcoming, for example, the decriminalization of defamation in November 2012. However, he emphasizes that there is a concrete need for further improvement, particularly in the translation of national norms into reality.

14. The Special Rapporteur was especially concerned by the information he received about recent cases of alleged intimidation by the authorities, through multiple legal procedures, of media and journalists critical of them. The worrying indicators include the repeated implementation of disproportional restrictions against media enterprises and professionals in a relatively short space of time, including ordering the closing down of some of the most important private television channels and newspapers and the arbitrary detention of an investigative journalist. The adoption of excessive penalties, particularly against segments of the media critical of the authorities, has a negative impact which goes far beyond the direct damage to the media groups or journalists who are silenced. Extreme measures like this undermine the pluralism of the media and generate a widespread chilling effect which may seriously undermine the impact of all legislative progress in the area of freedom of expression. In this sense, the Special Rapporteur was also seriously concerned by allegations he heard regarding the interference by government authorities in the independence of regulatory bodies and of the judicial system, which are in turn implementing some worrying decisions.

15. The Special Rapporteur was also concerned by the level of polarization between media groups and journalists sympathetic to the Government and those taking a more critical position. In some situations, journalists' associations and civil society were very sceptical about the possibilities of establishing a constructive dialogue with the authorities in charge of designing and implementing regulations governing public and private media.

16. Since peacefully seceding from the Yugoslav Federation in 1991, the former Yugoslav Republic of Macedonia has experienced ethnic tensions on several occasions, culminating in 2001 in a conflict between Albanian rebels and Macedonian police and armed forces. Those tensions resurface occasionally in the political discourse and in the work of the media.

17. While noting with appreciation that the Government has engaged in initiatives supporting the promotion of cultural diversity in the media, the Special Rapporteur was disturbed by reports of the emergence of expressions of hate and incitement to discrimination on the grounds of gender, nationality, religion and sexual orientation in the media and on the Internet. In particular, he noted a lack of attention paid to discrimination on the grounds of sexual orientation and gender identity.

18. The subsections below detail further the main issues discussed during the visit, including concerns and the positive steps taken.

B. Issues of concern

1. Freedom and independence of the media

19. As already indicated, the overall national legal framework protecting the right to freedom of expression and regulating the activity of the media in the former Yugoslav Republic of Macedonia is mostly in line with relevant international human rights standards. Moreover, efforts continue to be made to bring national norms further into compliance with international standards and in particular with European standards. Despite this, the Special Rapporteur underlines his serious concern regarding the uneven enforcement of existing norms and its direct impact on the pluralism and independence of the Macedonian media.

Over the last four years, at least seven important media outlets, including the oldest private television channel operating in the country and one of the most read political weekly magazines, were obliged to terminate their activities. In this context, the reported proliferation of judicial measures taken against certain media enterprises at the request of the Government and the regulatory authorities; the allegations of interference by the Government in the functioning of the regulatory body; the allegations of unfair allocation of State publicity resources favouring media groups aligned with the Government; and allegations of pressure being exercised against unionized journalists are all worrying indicators of the diminishing space for a plural and independent media in the country.

(a) Judicial action against media enterprises and journalists

20. Civil society and international observers have reported increasing concerns regarding the imposition of disproportional penalties against media groups and professionals regarded as critical of the ruling authorities. The financial difficulties generated by judicial measures taken against media groups and journalists have resulted in the termination, or significant reduction, of activities of important groups, consequently limiting the pluralism of opinions in the mainstream media operating in the country.

21. The main indicator illustrating the concerns regarding the judicial harassment of independent media is the cessation of activities of a major broadcaster (A1 TV and its sister company, A2 TV) and of three daily newspapers (*Vreme*, *Koha e Re* and *Spic*) in July 2011. A1 was the oldest private television channel in activity in the country and *Vreme* one of the most read newspapers. The companies were closed as a consequence of a tax fraud and money laundering lawsuit brought against Velija Ramkovski, the owner of Plus Produkcija media group, the company which owned A1 and *Vreme*. In December 2010, Mr. Ramkovski, his daughter and 17 other persons employed by or collaborating with Plus Produkcija were arrested in a massive police operation criticized by civil society as disproportional and abusive. Despite the fact that the company had allegedly paid its initial debts, allowing A1 TV to continue operating, an additional demand for over 9 million euros was imposed on the group, to be paid in less than one month. The Public Revenue Office froze the assets of the group to guarantee enforcement of the financial penalties, which were extremely high considering the financial capacity of the media market in the country. Attempts to organize staggered payments were rejected. As a consequence, newspapers belonging to the group stopped circulating in July 2011 and A1 TV had its frequency revoked following a declaration of bankruptcy.

22. Without venturing any opinion on the merits of the accusation of tax evasion and money laundering, the Special Rapporteur was particularly disturbed by the refusal of the judicial and fiscal authorities to identify or adopt any sort of alternative solution, which could have prevented the simultaneous closure of so many media entities. He fully shares the concerns voiced by the Representative on freedom of the media of the Organization for Security and Cooperation in Europe (OSCE) with regard to the lack of proportionality in the penalties imposed against A1 TV and the newspapers. He also shares her conclusions regarding the impact of these closures on the elimination of pluralism in the media.[2]

23. In June 2012, another enterprise belonging to the same media group was targeted once again by a disproportional penalty when the Broadcasting Council revoked the licence of A2 TV, based on articles 63 and 64 of the Law on Broadcasting Activity, for allegedly failing to meet the licence criteria for its programming format by dedicating more than 65 per cent of its airtime to entertainment programming, thereby providing insufficient educational and news programming. A2 TV had been affected financially by the penalties applied to the Plus Produkcija group the previous year, but demonstrated its intention to

[2] Organization for Security and Cooperation in Europe, regular report to the Permanent Council by the Representative on freedom of the media, 24 November 2011, p. 10.

comply with the format requirement. Again, as stated by the OSCE Representative on freedom of the media, the decision of the Broadcasting Council was clearly disproportional and reinforced concerns regarding its independence.[3]

24. The harsh measures adopted against the Plus Produkcija group contributed to intensifying the perception of an increasing politicization of the media, with most of the mainstream groups tending to favour the views of the Government. It was brought to the attention of the Special Rapporteur that the owner of A1 TV was considered to be supportive of the ruling leadership until 2009. In 2010, the group allegedly adopted a more critical tone, which coincided with the beginning of the drastic judicial initiatives taken against it. The polarization appears to have continued, affecting the quality of the work of the media. During local elections in March 2013, for example, external observers reported a lack of balanced coverage by several broadcasters, including the public service broadcaster.[4]

25. Despite this difficult environment, the Special Rapporteur notes with appreciation the adoption by the Parliament of the new civil law regulating defamation and the consequent elimination of sanctions for defamation from the Criminal Code. In his opinion, the use of criminal law for claims of defamation is disproportional and can easily generate a chilling effect, which can undermine the independence of the media. That legal reform was one of the targets agreed through the high-level dialogue with the European Union on accession.

26. Some of the actions implemented to raise the awareness of judges of international standards concerning the right to freedom of opinion and expression are equally positive, including the translation and dissemination of the pertinent jurisprudence of the European Court of Human Rights. In the view of the Special Rapporteur, the sensitization of the judicial authorities to international human rights standards should receive continued attention.

27. Nevertheless, the Special Rapporteur noted with concern the information received from various sources that, even after the decriminalization of defamation, accusations of defamation were still made relatively frequently, particularly against the investigative segments of the media covering corruption and abuse by State authorities. By April 2013, for example, 60 lawsuits relating to defamation had reportedly already been opened.[5]

28. It is clear that independent journalists or media outlets cannot survive an onslaught of civil claims or demands. The fines prescribed by the new Law on Civil Liability for Defamation and Libel appear to be excessively high, considering the average salaries of journalists in the country and the economic capacity of some independent media groups. Concerns also exist with regard to the delay in the conclusion of multiple defamation procedures, possibly triggered by a single case, and the potentially high costs these might generate.

29. In this regard, the Special Rapporteur was informed of many claims of defamation against *Fokus Magazine*, a weekly known for its investigative work. The financial instability generated by the continued legal targeting effectively undermined the operational capacity of this important magazine. In particular, he received information on accusations of defamation after an article was published in the magazine quoting a statement made by a

[3] Organization for Security and Cooperation in Europe, regular report to the Permanent Council by the Representative on freedom of the media, 29 November 2012, p. 15.

[4] European Commission, staff working document, progress report on the former Yugoslav Republic of Macedonia, 2013, p.12, available from http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mk_rapport_2013.pdf.

[5] Amnesty International, submission to the Working Group on the Universal Periodic Review at its eighteenth session, June 2013.

former ambassador of the former Yugoslav Republic of Macedonia to the Czech Republic concerning corruption among public officials.

30. On 27 December 2013, *Fokus Magazine*, its editor and a journalist were all condemned for publishing that statement. They were ordered to pay damages in an amount which threatened to close the magazine. The Special Rapporteur expresses his concern at the additional negative impact of this decision on the work of *Fokus Magazine* and considers it completely inappropriate for the courts to even consider claims of defamation regarding the factual reporting of declarations by State officials or other third parties. The importance of the further efforts required to revise such practices in the courts and raise awareness within the judiciary is clear in this case.

31. Still with regard to *Focus Magazine*, the Special Rapporteur was concerned by the lack of attention paid by the authorities to the death of its editor-in-chief and founder, Nikola Mladenov, in a car accident in March 2013. As multiple interlocutors, including persons working closely with Mr. Mladenov, indicated their suspicions that he had been murdered, the Special Rapporteur asked the competent authorities why they had not initiated a criminal inquiry into the causes of the accident and the death of Mr. Mladenov. The response of the authorities was that they had no evidence to justify treating the case differently from any other road accident in the country. The Special Rapporteur emphasizes that it is very important to ensure that full attention is paid to all episodes of alleged violence against journalists.

32. The detention and conviction of the investigative journalist Tomislav Kezarovski is another recent example of the intimidation of investigative media professionals through judicial action in the former Yugoslav Republic of Macedonia. In October 2013, a court of first instance convicted Mr. Kezarovski and sentenced him to four and a half years' imprisonment for revealing the identity of a protected witness in a murder case in an article published in 2008. The journalist was arrested in May 2013 and kept in detention for six months, including during the time of the visit of the Special Rapporteur, without clear judicial explanation, despite the protests of civil society and calls for his release by international human rights experts. He was transferred to house arrest in November 2013, while he appealed against his conviction.

33. The sentence of four and a half years' imprisonment for disclosing the identity of a witness in a news article, published two years before the determination of the protected status of that witness, seems to be unfair and clearly disproportionate. Moreover, civil society organizations have claimed that Mr. Kezarovski's revelation served the public interest, as it was relevant to denouncing abuse by the police. The Special Rapporteur requested a meeting with the journalist during his visit and deeply regrets that the judicial authorities refused to allow him access. He publicly joined with the OSCE Representative on freedom of the media in her call for Mr. Kezarovski's release and continues to believe that his sentencing is unfair and negatively affects the enjoyment of the freedom of the media in the country. Such extreme punishment of an investigative journalist generates a troubling effect that certainly affects all journalists in the country.

34. The negative impact of the successively contested judicial and regulatory decisions on the pluralism of the media indicates the need for a careful review of the work and functioning of the judiciary and of the regulatory bodies. In this regard, the Special Rapporteur was further concerned by the allegations he received regarding the interference of governmental authorities with the independence of judges and lawyers. The recent appointment of five members of the Constitutional Court, for example, is alleged to have directly affected the independence of this body, which has started to delay and compromise on decisions, including in recent cases related to the right to freedom of expression. Furthermore, the Constitutional Court does not have the administrative and financial autonomy to perform its work with the required independence. All human rights are at great risk without the protection of a fully independent judicial system. The Special Rapporteur

therefore emphasizes that urgent responses are needed to identify carefully and eliminate all possible avenues of interference in the work of the judiciary.

(b) Independence of the regulatory body and of the public broadcaster

35. In the terms of article 21 of the Law on Broadcasting Activity the Broadcasting Council is an independent regulatory body with oversight responsibilities for broadcasting activity. The tasks of the Council include deciding on the allocation, revocation and renewal of broadcasting licences, supervising compliance with the Law and adopting legal measures against those failing to comply (art. 37). The neutrality and independence of this regulatory body is central to ensuring success in its task of ensuring pluralism of expression, the existence of diverse and independent media and protecting the interests of citizens.

36. In this regard, serious concern was expressed over the revision by the Government of the regulation regarding the composition of the Broadcasting Council, approved by parliament in July 2011. The number of members of the Council was expanded from 9 to 15, with the additional 6 members to be nominated by State institutions controlled by the governing coalition. The independence of the Council, given its new composition, was widely questioned, for example, when it recommended revoking the licence of A2 TV for failing to air a minimal amount of news and educational programming (see para. 24 above). This was considered a disproportional punishment of a media group which had already been affected by previous legal procedures.

37. As detailed in recommendation Rec(2000)23 of the Council of Europe Committee of Ministers to member States on the independence and functions of regulatory authorities for the broadcasting sector, rules regarding membership of such bodies should be defined so as to protect them against any interference, in particular by political forces or economic interests. In this regard, the sudden shift in the selection of members of the Broadcasting Council should at least have been more carefully evaluated.

38. A totally new regulatory framework is being established following the adoption of the new Law on the Media on 25 December 2013. As described below, the original drafts of this law caused great concern among civil society and the international community, given its imprecise language and excessive scope for regulation. The revised law still stipulates the establishment of a new "media agency". The independence of this new body is going to be central to ensuring its legitimacy.

39. Questions were also raised with regard to the administrative and financial independence of the public broadcasting service, Macedonian Radio Television. In July 2011, the executive committee of Macedonian Radio Television decided to dismiss all seven directors of the board simultaneously, although only two were nearing the end of their term of office. In this regard, the Special Rapporteur recalls that States should also guarantee the full independence and editorial freedom of public broadcasting services.

(c) Transparency in the allocation of State publicity

40. The allocation of State resources to advertisements was indicated as another matter of concern. The Government is an important purchaser of publicity and representatives of civil society underlined the lack of transparency in the allocation of State resources among media groups and the potential bias in resource allocation favouring sympathetic enterprises.[6]

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[6] See submissions to the Working Group on the Universal Periodic Review at its eighteenth session, by Reporters without Borders and by Metamorphosis and the Association for Progressive Communications, June 2013.

41. The combination of the financial risk experienced by media which are critical of the authorities and often targeted by lawsuits, and the disadvantage they are at in terms of access to State advertising seems to be gradually restricting the plurality of opinion in the media landscape in favour of media aligned with the Government. As the Human Rights Committee indicated in its general comment No. 34, care must be taken to ensure that systems of government subsidy to media outlets and the placing of government advertisements are not employed to the effect of impeding freedom of expression.

(d) Tensions with journalists' unions

42. Associations representing journalists in the former Yugoslav Republic of Macedonia are very polarized. In their meetings with the Special Rapporteur, representatives of the Association of Journalists of Macedonia, established in 1946, and of the Independent Trade Union of Journalists, established in 2011, on one side, and of the Macedonian Association of Journalists, established in 2002, on the other, presented very different views with regard to the challenges experienced by journalists and the media.

43. Representatives of the Association of Journalists and of the Independent Trade Union reported multiple concerns with regard to the diminishing pluralism in the media, the selective enforcement of legislation against journalists critical of the authorities and the undue pressure exercised by media owners against members of that organization, possibly influenced by governmental pressure. Representatives of the Macedonian Association of Journalists criticized the work of the other unions and civil society entities, noting their politicization.

44. The Special Rapporteur noted with particular concern a report concerning the dismissal from Alsat TV of Tamara Causidis, president of the Independent Trade Union of Journalists, from her functions in August 2011. Her dismissal appears to have violated the law prohibiting companies from firing union leaders. Reportedly, she was asked by her supervisors to reduce her union-related activities. A month after concluding his visit, the Special Rapporteur was also informed of allegations regarding pressure being recently put on media professionals working in the cities of Bitola, Kočani and Štip by owners of media groups to sign applications to join the Macedonian Association of Journalists.

45. Tensions between the Government, opposition political parties and civil society representatives, including representatives of journalists' unions, reached a peak after 24 December 2012, when opposition politicians and journalists were expelled from the floor of the national parliament during the voting on the budget for 2013. Journalists reported being forcibly removed from the parliament chamber on the order of the President of the legislature, prior to the violent expulsion of all opposition representatives who were opposing the adoption of the budget. Those confrontations paralysed political debate in parliament for almost three months and also disrupted the process of dialogue on the media launched in the context of the high-level dialogue with the European Union on accession. In August 2013, a political ad hoc inquiry commission found that the expulsion of journalists and opposition politicians had been in violation of the Constitution and the law.

(e) Adoption of new regulatory instruments

46. In April 2013, the proposal put forward by the Government for a law on media and audiovisual services caught the attention of the national and international human rights community. The original draft was widely criticized for its complexity, unrealistic ambition of defining the profession of journalism and prescribing detailed standards for all mass media providing information to the public. It was also criticized for blurring distinctions between self-regulation and external oversight and for creating possible tools for arbitrary restrictions on freedom of expression. The Government listened to the criticisms and prepared three different versions of the original draft, in dialogue with international experts, including the Special Rapporteur and the Office of the Representative on the freedom of the media of OSCE.

47. The Special Rapporteur welcomes the efforts of the Minister of the Information Society and Public Administration to conduct consultations on the draft law with various national stakeholders and international experts in order to ensure its adequacy with regard to international standards. It was recognized that some progress had been achieved as a result of the dialogue between national authorities and international experts.

48. The Special Rapporteur was not able to complete an analysis of the new legal instruments before the finalization of the present report and he intends to continue following this issue, given its central relevance for the promotion and protection of the independence of the media in the country. Nevertheless, he underlines the importance of ensuring that the new legal framework is implemented in an inclusive manner, in particular considering the very marked polarization between the Government and some sectors of the media and civil society. He also notes that attention must be paid to ensuring the voluntary nature of all initiatives on self-regulation.

2. Right to access information

49. Free access to information is guaranteed in the Constitution by article 16 on freedom of opinion and expression. Since 2006, the country has also had a Law on Free Access to Public Information which, inter alia, details the procedures for implementation of the right to free access to information in the country and established the Commission for Protection of the Right to Free Access, mandated to oversee the implementation of the law. The law allows any natural or legal person to obtain information from national and municipal bodies. Requests for information can be made in oral, written or electronic form. The authorities should respond within a 30-day period.

50. Over seven years after the adoption of the Law on Free Access to Public Information, some progress was noted in the responses of the authorities to requests for information and in the proactive display of public information. However, limitations are still to be noted in the implementation of the Law.

51. The Commission for Protection of the Right to Free Access does not provide comprehensive statistical data on issues such as the total number of requests for information received. Civil society criticized the lack of recommendations in the report of the Commission in 2012 on important topics, such as the large number of cases for which "administrative silence" prevented access to information.[7]

52. The European Commission considered that enforcement of the Law on Free Access to Public Information was inefficient and called for the Commission for Protection of the Right to Free Access to be better resourced.[8] It further reported that one third of holders of information failed to submit their annual reports to the Commission for Protection of the Right to Free Access, penalties were not imposed in practice and political parties were excluded from the obligation to provide information to the public.

53. The Macedonian Young Lawyers Association assessed the responsiveness of the authorities to requests for information in 2012: it submitted 145 requests for free access to information to a number of State institutions and noted that two thirds of the information holders responded within the time limit of 30 days and delivered the requested information. However, it also noted that some institutions never responded to its requests and some simply redirected the demand to other institutions without providing any explanation.[9]

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[7] See www.freedominfo.org/2013/04/group-asks-macedonian-leaders-to-reject-report/.

[8] European Commission, progress report, 2013, p. 9.

[9] Report of the Metamorphosis Foundation for Internet and Society, available from www.metamorphosis.org.mk/en/news/macedonia/2218-podobruvanje-ima-ama-pristapot-do-informacii-od-javen-karakter-se-ushte-e-ispraven-pred-seriozni-predizvici.

54. In 2013, an extensive study on views and perceptions of the right to free access to information was conducted.[10] Survey results indicated that a significant proportion of citizens still did not believe that they enjoyed the right to request information from public and State institutions. Despite the law, one quarter of the surveyed group would still resort to connections and friends in order to obtain the information needed. The study also indicated that the majority of bodies holding information had implemented certain activities to align their practices with the Law, but 25 per cent of the surveyed sample had not taken any specific initiative in that regard.

55. The Special Rapporteur emphasizes that protection of the right to access information should receive dedicated attention on a permanent basis, given its central importance for the promotion of democratic governance. As indicated in his previous report to the General Assembly (A/68/362), the adoption of national laws on access to information is a very positive step, but should be understood as a first step: full implementation requires political will, with full endorsement by various relevant authorities of the principles enshrined in the new normative framework; an active civil society advocating for and monitoring implementation of those norms; and overall respect for the rule of law.

56. In this sense, despite recognizing advances, the Special Rapporteur notes that the capacity of government officials to respond to requests for information can be enhanced through regular training and technical support. Investment is also necessary to raise awareness of the procedures for exercising the right to information. Finally, the annual reports presented by the Commission for Protection of the Right to Free Access should contain more detailed information, including disaggregated data, on the requests for information made to multiple State entities, to enable a better assessment of their compliance with the law.

3. Use of the Internet as an alternative media

57. In 2012, the International Telecommunication Union estimated that the Internet was accessible to 51.5 per cent of the population.[11] Policies promoting broadband access and universal services were considered successful, as the number of households owning a computer had doubled between 2006 and 2011 and virtually all of them had also acquired broadband connections.[12] The digital switchover is under way in the country. In 2012, the Law on Electronic Communications was amended, fixing 1 June, 2013 as the date for analogue switch-off.

58. Estimates further indicate that approximately one third of the population is active on social networks, particularly the younger age groups and the Macedonian-speaking population.[13] Recently, social media has functioned as an important instrument for political activism: for example, during the elections in 2011, the death of a young activist at the hands of the police precipitated street protests and online campaigns against police brutality organized through social networks.

59. However, television remains the dominant media channel in the country, often providing a politicized coverage tending to be supportive of the Government. On the other hand, the rise of the Internet as a source for broadcasting news appears to have expanded the range and scope of voices in the media. Journalists whose work was affected by the recent closure of traditional media have considered migrating to the virtual space.

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[10] Open Society Foundation, "Overcoming the principles of secrecy in the public administration's operation" (Skopje, November 2013).

[11] See http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx.

[12] Open Society Foundations, "Mapping digital media: Macedonia" (London, 2012).

[13] Ibid.

60. As much as the Internet offers an important space for independent voices not represented in the mainstream media, the capacity of alternative news portals is still small, owing to their limited financial and professional resources. The political and ethnic polarization has also occasionally undermined the use of the Internet, with instances of hate speech appearing online.

4. Privacy in communications

61. The rights to privacy, data protection and secrecy of communications are enshrined in the Constitution. Privacy of communications is expressly guaranteed in article 17: "The freedom and confidentiality of correspondence and other forms of communication is guaranteed. Only a court decision may authorize non-application of the principle of the inviolability of the confidentiality of correspondence and other forms of communication, in cases where it is indispensable to a criminal investigation or required in the interests of the defence of the Republic."

62. The Law on Electronic Communications further established the obligation for operators of telecommunications networks and the providers of public telecommunications services to ensure confidentiality in communications to the best of their technical abilities.

63. Despite these clear protections of the right to privacy, additional norms and legal reforms have recently expanded the scope of surveillance of communications without establishing adequate protections and oversight.

64. In 2010, the Ministry of Transport and Communications proposed an amendment to the Law on Electronic Communications, establishing the obligation for telecommunications operators to provide direct and uninhibited access to traffic and other kinds of data to the Ministry of the Interior without prior notice or a court order. The amendment was adopted with strong support in parliament. Fortunately, some months after the adoption of this amendment, the Constitutional Court repealed the amendment following the submission of a petition by human rights organizations.

65. However, in 2012, another legal reform expanded the possibilities of surveillance of communications without adequate oversight: parliament unanimously amended the Law on Interception of Communications, expanding the capacity of State institutions to use surveillance technology. Under the amendments, any police officer, for example, may propose wiretapping over a period of four months (previously the limit was 30 days). The provision establishing that legal wiretapping may only be conducted within a specific period, calculated in accordance with the goals of the investigation, was removed from the new law.

66. The Special Rapporteur focused his previous annual report to the Human Rights Council (A/HRC/23/40 and Corr. 1) on the impact of the surveillance of communications by States on the exercise of the human rights to privacy and to freedom of opinion and expression. In the present report, while noting the interdependence between the rights to privacy and to freedom of expression, he urges all States to revise their laws and practices with regard to surveillance, paying attention to the issue of judicial oversight. In this regard, he notes with concern the weakening of national norms regulating surveillance in the former Yugoslav Republic of Macedonia and reaffirms his call for a comprehensive review of all relevant national norms, in order to ensure protection of the right to privacy, in line with international human rights norms.

5. Respect for diversity

67. The former Yugoslav Republic of Macedonia displays a rich cultural and linguistic diversity. The two most significant groups of the population are Macedonians, mostly Orthodox Christians, and Albanians, who are predominantly Muslim. The languages spoken in the country include Macedonian, Albanian, Romany, Turkish and Serbian. The Ohrid Framework Agreement, established by the leaders of the main parties following

violent clashes between the Macedonian Armed Forces and the ethnic Albanian National Liberation Army in 2001, provided various guarantees for the human rights of ethnic Albanians, including the use of Albanian as an official language in the country. The right to protection from discrimination is established in article 9 of the Constitution. In 2010, the Law on the Prevention of and Protection against Discrimination was also enacted.

68. During his visit, the Special Rapporteur noted with appreciation the measures taken to ensure the functioning of media services controlled by or serving cultural and linguistic minority groups in the country. For example, he was informed that small public grants are given to some minority media outlets, especially those broadcasting in Romany. Information was also received on the maintenance by the public service broadcasting network of a special channel for broadcasting programmes in the various languages spoken around the country, although expressions of concern were made regarding the disproportional predominance of Albanian language broadcasting.

69. The authorities should pay permanent attention to the protection of diversity in the media. As emphasized by the Human Rights Committee in its general comment No. 34, States should take particular care to encourage an independent and diverse media as a means of protecting the right of media users, including members of ethnic and linguistic minorities, to receive a wide range of information and ideas.

70. Despite the progress made so far, the Special Rapporteur also noted with concern occurrences of hate speech and problems in the legislation addressing incitement of hatred.

71. The vague formulation of article 319 of the Criminal Code, which imposes sanctions for causing national, racial or religious hatred, discord or intolerance, is a source of potential abuse of the right to freedom of expression. After visiting the country in 2009, the Special Rapporteur on freedom of religion or belief urged the Government to review article 319, given its imprecise wording and the consequent chilling effect it might have on the exercise of the freedoms of expression and of religion or belief (A/HRC/13/40/Add.2, para. 48). In 2004, article 319 was allegedly misused against a religious leader sentenced for undermining the position of the Macedonian Orthodox Church, conducting a service of worship in a private flat and distributing a calendar that offended religious sentiments.

72. Despite the elimination of sanctions for defamation from the Criminal Code in 2012, the provisions of article 319 had not been amended. During the visit of the Special Rapporteur, the Ministry of Justice stated that it was debating the amendment of article 319 in order to comply with recommendations made by human rights experts, including the Special Rapporteur on freedom of religion or belief. Amendment of this article was included in the Government proposal in November 2013 for amendments to the Criminal Code, which were adopted by parliament in February 2014.

73. The Special Rapporteur recalls that international human rights law recognizes that the right to freedom of expression can be restricted where it presents a serious danger for others and for their enjoyment of human rights. However, it is crucial that any restrictions respect the following principles: (a) they must be provided for by law, which must be clear, unambiguous, precisely worded and accessible to everyone; (b) they must be proven by the State as necessary and legitimate to protect the rights or reputation of others, national security or public order and public health or morals; and (c) they must be proven by the State to be the least restrictive and proportionate means to achieve the purported aim (A/67/357, para. 41).

74. Hate speech in the media and on the Internet has surfaced as a concern, sometimes connected with the polarization between political groups aligned with ethnic and religious groups. Article 394 (d) of the Criminal Code established specific sanctions for discriminatory remarks on the Internet: "Any person who, through a computer system, is distributing racist and xenophobic written material, image or other representation of an idea or theory that advocates, promotes or incites hatred, discrimination or violence, against any

individual or group of individuals, based on race, colour, national or ethnic origin, as well as religious belief, shall be sentenced to imprisonment of one to five years."

75. In this regard, the Special Rapporteur is worried by information he has received about the lack of attention paid by the authorities to the emergence of direct and indirect attacks against sexual minorities in the country and by the use of homophobic language by some political figures and the media.

76. Despite efforts by civil society during the drafting process, the Law on the Prevention of and Protection against Discrimination does not contain explicit references to sexual orientation or gender identity among the prohibited grounds for discrimination. Article 394 (b) of the Criminal Code also lacks specific references.

77. The lack of specific protection for acts against lesbian, gay, bisexual and transgender activists is particularly worrying, considering recent attacks against representatives of that community. Activists protesting against discrimination against the lesbian, gay, bisexual and transgender community were attacked during a march for the International Day of Tolerance in November 2012. In 2013, attacks in Bitola against LGBT United and the Coalition for the Sexual and Health Rights of Marginalized Communities were also reported. Over the same period, repeated attacks damaged the facilities of the support centre for the lesbian, gay, bisexual and transgender community in the old bazaar of Skopje, to the extent that consideration was being given to moving the support centre to another location because of the insecurity. Those attacks were reported to the authorities by the victims, but the perpetrators were not identified. The Special Rapporteur was also informed of the dissemination of discriminatory messages in the media, including by some leading broadcasters.

78. The increasing prevalence of expressions of hate, incitement to violence, discrimination and hostility in the mass media and on the Internet indicates the need for permanent attention to the fight against intolerance. In view of the recurrent hostility against the lesbian, gay, bisexual and transgender community, the authorities should not only address better the prohibition of discrimination on the grounds of sexual orientation through national norms, but should also consider paying particular attention to the enforcement of the law to prevent hate speech and violence and investing in non-legal measures, such as education and counter-speech, to encourage the abandonment of discriminatory stereotypes. Formal and open rejection of hate speech by high-level public officials, in particular hate messages targeting sexual minorities, would also play an important role in the struggle against intolerance and discrimination in the country.

V. Conclusions and recommendations

79. **The former Yugoslav Republic of Macedonia has repeatedly affirmed its commitment to ensuring the full realization of the right to freedom of opinion and expression. The relevant national legal framework is mostly in line with international standards. The authorities have also frequently engaged in open debates with international experts on the measures potentially needed to adjust national laws and policies so that they are closer to international norms concerning the right to freedom of opinion and expression.**

80. **Nevertheless, the enforcement of national and international norms seems to be frequently problematic and a worrying trend of increasing confrontation between the authorities and the independent media has been noted in recent years. The Special Rapporteur is particularly worried by the multiple allegations he received regarding disproportional restrictions being imposed, mainly over the last three years, on independent or critical segments of the media.**

81. Progress, such as the decriminalization of defamation, may be undermined if judicial cases carrying threats of heavy fines continue to be opened against the investigative press. Belief in the judicial and non-judicial oversight guarantees established in law can be undermined by sudden changes in the composition of courts or in the membership of regulatory bodies. The increasing polarization of the political debate aggravates this scenario and can negatively affect the constructive dialogue needed for the consolidation of democratic governance in the country.

82. Progress was noted in the promotion of access to information, in the expansion of Internet use and in the development of work in minority languages by the media. However, much more can and must be done in these areas as well. The right to access information is not commonly recognized by either officials or the overall population. The proliferation of discriminatory remarks and even attacks against the lesbian, gay, bisexual and transgender community, for example, demands an urgent and vocal response from the authorities condemning this form of discrimination.

83. In this regard, the Special Rapporteur proposes the following recommendations to the State.

A. Ensure the adequate enforcement of norms protecting the freedom and independence of the media

84. Permanent attention must be paid to the enforcement of norms regulating the work of the media and guaranteeing its freedom. All allegations regarding the arbitrary enforcement of disproportional penalties against media outlets and journalists need to be reviewed and potentially reversed, and reparation offered to the victims of arbitrary punishment.

85. The judicial authorities should be further trained to ensure that the Law on Civil Liability for Defamation and Libel is adequately implemented, in line with international standards and jurisprudence concerning the right to freedom of opinion and expression. The financial penalties prescribed in the law should be revised in the light of the economic reality of the country. State officials and the political leadership in general should refrain from the systematic submission of judicial complaints against investigative journalists and the media.

86. The State should ensure the independence of national courts as a matter of priority. The appointment process for judges and for the membership of regulatory bodies should be carefully analysed and revised in the light of similar relevant international practices. The financial and technical autonomy of judicial bodies needs to be fully secured.

87. The State should ensure that any regulatory body established since the recent adoption of new regulations should have its membership and work protected against any interference, in particular by political forces or economic interests. Further efforts are required by the governmental authorities to ensure that a more fluid dialogue is maintained with civil society on the implementation of any regulatory initiative.

88. The independence of journalists' associations and the right of journalists to affiliate themselves with any association of their choice should be fully protected. Allegations of reprisals against journalists active in an association, or of any interference in the process of affiliation should be thoroughly investigated.

89. The financial and administrative independence of the public broadcaster must also be enhanced. Recent changes in the directorship of Macedonian Radio Television carried out by the executive committee should be revised in the light of the norms regulating the work of the public broadcaster.

90. **Expenditure on advertising by State institutions, political parties and public enterprises should be fully transparent to the public. Systematic assessments must be carried out to ensure that government subsidies or expenditure on advertising do not favour specific media outlets or generate dependency.**

B. Invest in the promotion of the right to access information

91. **In order to enhance the implementation of the national norms protecting the right to access information, the capacity of the Commission for Protection of the Right to Free Access should be enhanced. The reports periodically prepared by the Commission should contain more detailed information, including disaggregated data on the requests made to multiple State entities, and provide specific recommendations to address non-compliance with the law. Further efforts are also necessary to ensure that State institutions have the capacity to respond in a timely fashion to requests for information. Further investment should also be made in raising public awareness of the law and the procedures for requesting information.**

C. Revise legislation concerning the surveillance of communications

92. **The Law on Interception of Communications should be revised in order to ensure that it conforms to national and international norms protecting the rights to privacy and to freedom of expression. Particular attention must be given to ensuring that the surveillance of private communications only occurs under the most exceptional circumstances and exclusively under the supervision of an independent judicial authority.**

D. Ensure respect for diversity and non-discrimination

93. **The linguistic and cultural plurality of the media should continue to be promoted, given its important role in the promotion of equal access to information and social integration.**

94. **The State should maintain proactive leadership in the fight against all forms of discrimination, ensuring not only the enforcement of national norms, but also the promotion of non-legal measures to prevent incitement of hatred. Enhanced attention is required to the recurrent hostilities against the lesbian, gay, bisexual and transgender community. All episodes of violence and intimidation against representatives of the community must be carefully investigated so that perpetrators are held accountable. Formal and open rejection of all forms of incitement of hatred, including against the lesbian, gay, bisexual and transgender community, by all political authorities in the country is crucial in the fight against discrimination.**